STUDENT IDENTIFICATION NO.

MULTIMEDIA UNIVERSITY

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FINAL EXAMINATION

TRIMESTER 2, 2022/2023

ULV4612 - LAW OF EVIDENCE I

(All Sections/Groups)

06 JULY 2023

Reading Time : 9.00 am – 9.15 am
(15 Minutes)
Answering Time : 9.15 am – 12.15 pm
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they read the paper and make rough notes ONLY on their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages and is divided into 2 parts **(Part A and Part B)**. There are 2 questions in Part A and 3 questions in Part B.

3. Students are required to answer only **(1) question in Part A (answer either Q1A or Q1B) and answer ALL 3 questions in Part B.** All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall only a CLEAN and ORIGINAL copy of the:
   i. EVIDENCE ACT 1950, and
   ii. CRIMINAL PROCEDURE CODE

   (Students are not allowed to lend or borrow statute(s) during the Examination. "Clean" is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.)

5. Please write all your answers in the Answer Booklet provided.

PART (A)

Answer only (1) question in Part A.
Answer either Question 1A or Question 1B.

QUESTION 1A

In *Abdullah bin Atan v Public Prosecutor and other appeals* [2020] 6 MLJ 727 (FC), at 743, Tengku Maimun CJ observed, as follows:

"[34] Act A1274 was enacted to provide for the standard of proof at the end of the prosecution case. Prior to the Privy Council decision in *Haw Tua Tau v Public Prosecutor; Tan Ah Tee v Public Prosecutor; Low Hong Eng v Public Prosecutor* [1981] 2 MLJ 49, the consistent judicial opinion was that at the close of the prosecution case, the burden on the prosecution was to adduce evidence to prove their case beyond all reasonable doubt. ...

[35] The legal position was altered by the Privy Council decision in *Haw Tua Tau*, an appeal from the Singapore Court of Criminal Appeal. ..."

Evaluate the above statement based on the duty of the court in a criminal trial at the prima facie stage.

(25 marks)

OR

QUESTION 1B

"It is settled law that letters written without prejudice are inadmissible in evidence of the negotiations attempted. This is in order not to fetter but to enlarge the scope of the negotiations, so that a solution acceptable to both sides can be more easily reached."

(*per* Chang Min Tat FJ in *Malayan Banking Bhd v Foo See Moi* [1981] 2 MLJ 17 (FC), at 18.

With reference to the relevance authorities, critically evaluate the common features of "without prejudice" communication.

(25 marks)

Continued.....

PART (B)
ANSWER ALL QUESTIONS

QUESTION 2

Andrew and Donald were partners in a legal firm, Andrew & Donald, Advocates and Solicitors. Due to differences in opinion, they had parted company with each blaming the other for their parting of ways. Andrew ceased practice and was then employed at a local university as a lecturer. Donald continued practicing as a sole proprietor of Donald & Co. Advocates and Solicitors.

One day Andrew met with a former client of his named Freddie. Freddie informed Andrew that Donald had not stopped blaming Andrew for the termination of their legal firm. Freddie even suggested that Andrew visit the Facebook account of Donald. Andrew has now commenced defamatory action against Donald for a series of insulting and libelous comments found on Donald's Facebook. Among others there were comments alleging that Andrew had ceased practice as an advocate and solicitor because of the fear of disciplinary action by the Malaysian Bar Council regarding clients' monies which were missing from their old firm's accounts.

At trial, Donald denied that the Facebook account belonged to him and the judge of the Sessions Court dismissed Andrew's claim for failing the burden of proving that Donald was the owner of that Facebook account.

On appeal, analyse whether the Sessions Court judge had misdirected himself.

(25 marks)

QUESTION 3

In the trial of Tom and Harry, at the prosecution stage, the prosecution witnesses namely PW-1 (Inspector Baldev), the arresting officer and PW-2 (Sergeant Mat), and PW-3 (Corporal Chong) had all given evidence that both Tom and Harry had tried to flee the scene of the arrest after being told by PW-1, that a plastic bag full of cannabis was found stashed under the spare wheel housing of the car in which they were travelling in. Both had been apprehended by the police after a short chase.

From the facts of the case, on the day of the alleged offence, both Tom and Harry had stopped the car they were travelling in at a police road block in Simpang Empat, Alor Gajah, Melaka while they were on their way to Seremban. They had given their cooperation to the police and told PW-1 that the car they were travelling in was rented from Friendly Car Rental Co. in Melaka the previous day.

Continued.....

On being called to enter their defence, Tom and Harry had opted to remain silent upon the instruction of their solicitor. The court then found them guilty of the offence under s. 39A (2) of the Dangerous Drugs Act 1952.

a) With reference to the relevancy sections of the Evidence Act 1950, analyse whether the instruction given to Tom and Harry by their solicitor was ill advised; and

(12 marks)

b) Analyse whether the outcome of the case against them be different if both Tom and Harry had given credible explanation as regards their conduct of trying to flee on the day of the alleged offence?

(13 marks)

(Total 25 marks)

QUESTION 4

Salman, was charged under s.322 of the Penal Code for voluntarily causing grievous hurt to Roshan. As a result of his injuries, Roshan was hospitalized and was diagnosed as suffering from a broken bone in his left thigh. The prosecution had wanted to call Dr. Tripp, the doctor who had examined Roshan and who had prepared the medical examination report regarding the injuries sustained by Roshan.

The prosecution intending to tender the medical report had served a copy of it within time to the defence counsel, to which the defence had later complied with the provision of s. 399 of the Criminal Procedure Code requesting that the maker of the report be present at trial for purposes of cross-examination.

A few days before he was supposed to give evidence, Inspector Danny (the Investigating Officer) received news that Dr. Tripp had died when he accidentally tripped over some exposed electrical cables at the government hospital where he was working and was electrocuted. Inspector Danny had immediately subpoenaed Mr. Harun, an officer of the Registrar of Births to testify on the death of Dr. Tripp and to bring with him a computerized death certificate confirming the death.

Analyse for the prosecution who wish to tender the medical report prepared by Dr. Tripp in support of their case against Salman.

(25 marks)

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